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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 42988
)	
v.)	BLAINE COUNTY NO. CR 2013-2111
)	
MARCELINO B. BAEZA,)	REPLY BRIEF
)	
Defendant-Appellant.)	
_____)	

REPLY BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BLAINE**

**HONORABLE JONATHAN BRODY
District Judge**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case	1
Statement of the Facts and Course of Proceedings	2
ISSUE PRESENTED ON APPEAL	3
ARGUMENT	4
The Order Allowing J.C. To Testify Against Mr. Baeza At Trial By The Alternative Method Of Closed Circuit Television Violated Mr. Baeza's Due Process Right To A Fair Trial Because The Alternative Method Infringed On His Presumption Of Innocence	4
A. Introduction	4
B. The Alternative Method Infringed On Mr. Baeza's Presumption Of Innocence	4
C. Alternatively, Mr. Baeza's Judgment Should Be Vacated And The Case Remanded, Because The District Court Did Not Adequately Consider The Relative Rights Of The Parties Before Ordering The Alternative Method	5
CONCLUSION	8
CERTIFICATE OF MAILING	9

TABLE OF AUTHORITIES

Cases

<i>Ag Servs. of Am., Inc. v. Kechter</i> , 137 Idaho 62 (2002)	8
<i>Estelle v. Williams</i> , 425 U.S. 501 (1976)	4
<i>State v. Carter</i> , 155 Idaho 170 (2013)	5
<i>State v. Perry</i> , 150 Idaho 209 (2010)	6, 7

Statutes

I.C. § 9-1806	5, 6, 7, 8
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STATEMENT OF THE CASE

Nature of the Case

Following a jury trial, Marcelino B. Baeza was convicted of one count of felony lewd conduct with a minor child under sixteen, and acquitted on one count of lewd conduct. The district court imposed a unified sentence of twenty years, with ten years fixed.

With the district court's approval, the complaining child witness, J.C., was allowed to testify at the trial, outside Mr. Baeza's physical presence, by closed circuit television. On appeal, Mr. Baeza asserted the district court's order approving that alternative method violated his due process right to a fair trial because the alternative method infringed on his presumption of innocence. Alternatively, Mr. Baeza asserted his judgment should be vacated and the case remanded because the district court did not adequately consider the relative rights of the parties before ordering the alternative method.

In its Respondent's Brief, the State argued allowing J.C. to testify by alternative methods did not violate Mr. Baeza's due process rights, because Mr. Baeza did not show the alternate method was inherently prejudicial, the State had a compelling interest in protecting child victims of sexual assault from the trauma of testifying in court, and any error was harmless. (See Resp. Br., pp.15-21.) The State further argued Mr. Baeza's alternative argument that the district court did not adequately consider the relative rights of the parties was not preserved for appeal and Mr. Baeza did not show fundamental error, the district court properly considered the relative rights of the parties, and any error was harmless. (See Resp. Br., pp.21-24.)

This Reply Brief is necessary to show the State's fundamental error argument is without merit, because Mr. Baeza preserved his alternative argument for appeal.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Baeza's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court's order allowing J.C. to testify against Mr. Baeza at trial by the alternative method of closed circuit television violate Mr. Baeza's due process right to a fair trial because the alternative method infringed on his presumption of innocence?

ARGUMENT

The Order Allowing J.C. To Testify Against Mr. Baeza At Trial By The Alternative Method Of Closed Circuit Television Violated Mr. Baeza's Due Process Right To A Fair Trial Because The Alternative Method Infringed On His Presumption Of Innocence

A. Introduction

Mr. Baeza asserts the district court's order allowing J.C. to testify against him at trial, outside his physical presence, by the alternative method of closed circuit television violated his due process right to a fair trial. The alternative method infringed on Mr. Baeza's presumption of innocence.

B. The Alternative Method Infringed On Mr. Baeza's Presumption Of Innocence

Mr. Baeza asserts his constitutional right to a fair trial was violated because the alternative method infringed on his presumption of innocence. The alternative method was inherently prejudicial. See *Estelle v. Williams*, 425 U.S. 501, 505 (1976). Further, the alternative method was not justifiable as being necessary to further an essential state policy. See *id.* at 505 & n.2.

The State argues that Mr. Baeza did not "show a violat[ion] of his due process rights" because the alternate method was not inherently prejudicial and the State had a compelling interest in protecting child victims of sexual assault from the trauma of testifying. (Resp. Br., pp.11-19.) The State also argues any error in allowing the testimony by alternate method was harmless. (Resp. Br., pp.20-21.) The State's argument is not remarkable, and no further reply is necessary. Accordingly, Mr. Baeza refers the Court to pages 15-25 of the Appellant's Brief.

C. Alternatively, Mr. Baeza's Judgment Should Be Vacated And The Case Remanded, Because The District Court Did Not Adequately Consider The Relative Rights Of The Parties Before Ordering The Alternative Method

Alternatively, Mr. Baeza's judgment should be vacated and the case remanded, because the district court did not adequately consider the relative rights of the parties under Idaho Code § 9-1806 before ordering the alternative method of allowing J.C. to testify by closed circuit television. The district court did not adequately consider the relative rights of the parties because it did not address Mr. Baeza's due process assertion that his rights to a fair trial and the presumption of innocence would be violated.

The State argues Mr. Baeza "has not preserved this argument for appeal" because he "did not argue below that the district court failed to consider his due process rights when weighing the relative rights under Idaho Code § 9-1806(4)." (Resp. Br., p.22.) The State therefore contends fundamental error review applies with respect to this issue. (Resp. Br., pp.22-23.) The State's fundamental error argument is without merit, because Mr. Baeza preserved this issue for appeal.

The Idaho Supreme Court has held "the fundamental error test is the proper standard for determining whether an appellate court may hear claims based upon unobjected-to error in all phases of criminal proceedings in the trial courts of this state." *State v. Carter*, 155 Idaho 170, 191 (2013). Fundamental error review is not applicable here because Mr. Baeza objected through his response to the State's motion for an alternative method and his subsequent motion for reconsideration. (See R., pp.172-73; Tr., July 1, 2014, p.40, L.17 – p.42, L.15). As examined in the Appellant's Brief (see App. Br., pp.26-27), in the response to the State's motion for an alternative method,

Mr. Baeza challenged the alternative method on the basis of “Confrontation Clause” and on the basis of “Due Process Clause and the Presumption of Innocence.” (R., pp.172-73.) The district court, when it issued its initial order allowing the alternative method, did not address Mr. Baeza’s assertions on due process and the presumption of innocence. (See R., pp.193-98.) In support of his later motion for reconsideration, Mr. Baeza asserted the alternative method implicated his due process right to a fair trial. (See Tr., July 1, 2014, p.40, L.17 – p.42, L.15.) But the district court in its following order did not substantively address Mr. Baeza’s due process challenge to the alternative method. (See R., pp.409-16.)

Thus, the rationales behind fundamental error review are not present in this case. By asserting the alternative method implicated his due process right to a fair trial in his response and later in support of his motion for reconsideration, Mr. Baeza timely raised that claim, “which gives the [trial] court the opportunity to consider and resolve” it. *Cf. State v. Perry*, 150 Idaho 209, 224 (2010) (internal quotation marks omitted) (alteration in original). As the Idaho Supreme Court put it, “[o]rdinarily, the trial court is in the best position to determine the relevant facts and to adjudicate the dispute.” *Id.* In this case, the district court was in that position when Mr. Baeza filed his response, and later when Mr. Baeza argued in support of the motion for reconsideration. Further, because Mr. Baeza presented the issue of his due process right to a fair trial rather than remain silent about it, he did not “sandbag[] the court.” *Cf. id.* Fundamental error review is not applicable here.

The district court, despite stating it considered the factors in I.C. § 9-1806 (see R., pp.196-97, 413), did not address Mr. Baeza’s assertions that the alternative method

would violate his due process right to a fair trial by infringing on his presumption of innocence. When Mr. Baeza asserted the alternative method implicated his due process right to a fair trial in his response and later in support of his motion for reconsideration, he preserved the issue of whether the district court did not adequately consider the relative rights of the parties as required by I.C. § 9-1806. See *Perry*, 150 Idaho at 224. The State's argument would require defendants like Mr. Baeza to object an additional time to a district court's failure to adequately consider the relative rights of the parties, even after filing a motion for reconsideration. (See Resp. Br., pp.22-23.) Idaho law does not impose that additional burden on defendants.

The State's argument on this issue is otherwise not remarkable, and no further reply is necessary. Accordingly, Mr. Baeza refers the Court to pages 25-28 of the Appellant's Brief.

In short, the State's fundamental error argument is without merit, because Mr. Baeza preserved this issue for appeal in his response to the State's motion for an alternative method and his subsequent motion for reconsideration. The district court did not adequately consider the relative rights of the parties as required by I.C. § 9-1806 because it did not address Mr. Baeza's due process assertion that his rights to a fair trial and the presumption of innocence would be violated. Thus, the district court did not comply with the provisions of the Uniform Child Witness Testimony by Alternative Methods Act before determining whether to allow the presentation of J.C.'s testimony by the alternative method of closed circuit television. See I.C. § 9-1806. Mr. Baeza's judgment of conviction should be vacated, and his case should be remanded for the district court to adequately consider the Section 9-1806 factors before determining

whether to allow testimony by alternative method. See *Ag Servs. of Am., Inc. v. Kechter*, 137 Idaho 62, 67 (2002) (vacating and remanding a civil case where the district court did not address an issue).

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Mr. Baeza respectfully requests the Court reverse his judgment of conviction. Alternatively, Mr. Baeza respectfully requests the Court vacate his judgment of conviction and remand his case for the district court to adequately consider the I.C. § 9-1806 factors before determining whether to allow testimony by alternative method.

DATED this 10th day of February, 2016.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 10th day of February, 2016, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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